

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,)	File No. 14CR261
)	(3, 4, 6, 8, 10, 13,
Plaintiff,)	14, 15, 17, 18, 21)
)	(JRT/BRT)
vs.)	
)	
Naser Mustafa, Edwan T.)	Minneapolis, Minnesota
Mustafa, Bilal Muhammed)	January 5, 2018
Mustafa, Moises)	10:10 A.M.
Navarro-Cazales, Cederic)	
Chappell, Victor Tombekai Doe,)	
Yolanda Coombs, Caswana Miles,)	
Marquis Terrell Maggiesfield,)	
Marcus Phillip Coleman and)	
Abbas Ateia Al Hussainawee,)	
)	
)	
Defendants.)	
)	

United States of America,)	File No. 15CR032
)	(JRT)
Plaintiff,)	
)	
vs.)	
)	
James Allen Mrsich,)	
)	
Defendant.)	

BEFORE THE HONORABLE CHIEF JUDGE JOHN R. TUNHEIM
UNITED STATES DISTRICT COURT
(RESTITUTION HEARING)

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14 Proceedings recorded by mechanical stenography;
transcript produced by computer.

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10:10 A.M.

(In open court.)

THE COURT: You may be seated. Good morning, everyone. This is Criminal Case Number 14-261, United States of America versus Naser Mustafa, et al, and also 15-32, which is United States of America versus James Allen Mrsich.

Let's have counsel note appearances. First for the government?

MS. SCHOMMER: Good morning, Your Honor. Karen Schommer, Assistant United States Attorney, on behalf of the government.

THE COURT: Good morning.

For the defendants?

MS. BRANDL: Good morning, Your Honor. Jean Brandl representing Yolanda Coombs, who is not in court, but she has asked me to represent her without her presence.

THE COURT: Very well.

MR. GERDTS: Daniel Gerdts, Your Honor, for Mr. Al Hussainawee, who is seated beside me.

MR. GLASER: Good morning, Your Honor. Kurt Glaser for Marquis Maggiesfield, who is in Pekin, Illinois.

MR. OSTGARD: James Ostgard appearing for Mr. Chappell, who is appearing by phone.

1 MR. SCOTT: Dan Scott representing Naser Mustafa,
2 and he has waived his appearance.

3 THE COURT: Okay.

4 MR. SCOTT: His waiver is on file.

5 THE COURT: All right.

6 MS. MacGILLIS: Sarah MacGillis on behalf of
7 Edwan Mustafa, who has also waived his appearance verbally
8 to me after being explained of his rights.

9 MR. DUNN: George Dunn on behalf of Victor Doe,
10 who has waived his appearance.

11 MR. RUNDQUIST: Casey Rundquist on behalf of
12 Bilal Mustafa, who has similarly waived his appearance.

13 THE COURT: Very well.

14 MR. STARR: Your Honor, William Starr on behalf
15 of James Mrsich, who is in court.

16 THE COURT: All right.

17 MR. LENGELING: And, Your Honor, Robert Lengeling
18 on behalf of Caswana Miles, who is in the indictment. She
19 has waived an appearance also.

20 THE COURT: All right. Very well.

21 Okay. Let's see. Ms. Schommer, are you going
22 first this morning?

23 MS. SCHOMMER: Yes, Your Honor. And I don't know
24 if Your Honor has a preconceived notion of how to handle
25 this. There are a couple of things that I think we can

1 take care of first before getting into each of the
2 individual defendants who have filed objections.

3 First, with Your Honor's permission, I would like
4 to just place on the record just procedurally some
5 information because I think it goes to some of the
6 defendants' claims that this is an untimely motion, and so
7 I would just remind the Court that each of these defendants
8 had pled guilty.

9 And back in July of 2015 just about all of those
10 guilty pleas had been entered save for one, and at that
11 time in July 2015, the probation officer, Leah Heino, sent
12 the Court, and copied all of defense counsel, a letter
13 concerning the restitution in this case.

14 And in that attachment to Ms. Heino's letter,
15 there was an assessment of restitution due to each of these
16 or owed by each of these defendants. Now, the numbers have
17 changed slightly in terms of how the government has
18 calculated those loss amounts, but in terms of the numbers,
19 certainly the defendants were on notice at that time that
20 restitution was due and owing, and that was before their
21 sentencings.

22 Again, and in each of their PSRs, restitution was
23 discussed with respect to each of the defendants, and the
24 defendants were on notice through the presentence
25 investigation that victims had in fact submitted

1 restitution requests, and that was contained in each of the
2 PSRs as well.

3 Then the United States in June of 2017 filed its
4 motion for an order of restitution, again setting forth the
5 dollar amounts for each of the defendants that the United
6 States was asking for restitution and has submitted then
7 separately by e-mail of July 26th, 2017, sent to each of
8 the defense counsel for each of the defendants a chart
9 outlining exactly the victims for whom the government
10 believes the defendants are responsible and the amounts the
11 government is claiming.

12 So that just puts us in the procedural history as
13 how we get to today. There are, as the Court is aware, 21
14 defendants. There are I believe 13 who have filed
15 objections to the government's request. That leaves a fair
16 number who have not filed any objection, and for those,
17 which I will go through in just a second, the United States
18 would ask that the government's unopposed motion as to each
19 of those defendants be entered as ordered.

20 Those are, Your Honor, Blanyon Davies, Tiara
21 Ligon, James Mrsich. The Court has entered some
22 restitution orders with respect to, for example, Jamal
23 Mustafa, Kanan Mustafa. I believe those were contained in
24 the final J & Cs, and again, they haven't filed a response
25 or objection to the government's motion.

1 Nizer Mustafa, similarly situated. Talal
2 Mustafa, who I believe originally filed an objection but
3 has since withdrawn that objection, and then Deantre
4 Squalls, and I believe that covers the defendants who have
5 either not filed an objection or have withdrawn their
6 objections, and the government would ask that an order of
7 restitution be entered against them as requested.

8 As a starting point, if I may approach, Your
9 Honor, the government has Government's Exhibit 1, which is
10 the restitution chart that has been sent to all of defense
11 counsel and the Court has seen with respect to hearings
12 where some of the Mustafas, as I just mentioned, but I
13 would like to make that a part of the record for purposes
14 of this hearing.

15 And we will be using this as a go-by for how the
16 government reached its restitution amounts for each.

17 THE COURT: Very well.

18 MS. SCHOMMER: I would note for the Court, having
19 seen this before and in my preparations leading up to
20 today, I did note one error in a dollar amount that the
21 government is requesting, and it's with respect to Marcus
22 Coleman.

23 In the, in a previous version of this restitution
24 supplement, the United States had listed the stipulated
25 loss for both Marcus and Robert Coleman as 400,000, when in

1 fact in their plea agreements and in the PSR they have
2 actually stipulated to a loss amount of 700,000.

3 It doesn't change the number with respect to
4 Robert Coleman, but for Marcus Coleman, it does change the
5 amount that the government is requesting. Instead of from
6 being a flat 400,000, it instead is \$400,628.48. There was
7 a just slight adjustment upward for him.

8 In other respects -- and I have noted that for
9 counsel here today. In all other respects, this spread
10 sheet is the same as what was sent to defense counsel back
11 in July and is the same as what has been presented
12 previously to the Court by the government.

13 Then we get into the individual defendants who
14 have made objections. The government has submitted its
15 position with respect to restitution, relies on the
16 restitution chart that I have just given to the Court as
17 Government's Exhibit 1.

18 And what I would say generally with respect to
19 each defendant, the United States has assessed the loss and
20 the restitution amount for each defendant based on their
21 individual conduct such that each defendant is being held
22 for losses to victims for whom they were directly, their
23 conduct directly impacted.

24 So, for example, if we look at -- excuse me --
25 Yolanda Coombs, and I will take this as an example, same

1 with Caswana Miles, those individuals were ones who stole
2 directly cell phones directly from Walmart. As you will
3 see on the chart on page two, those individuals are only
4 being held responsible for losses to Walmart.

5 They have not been held responsible and the
6 government is not asking for them to pay restitution to any
7 other victim, only the victim that was directly harmed by
8 their conduct, and so that's as a general sense.

9 The other thing that I would say is that as it
10 pertains, for example, to Ms. Coombs is a good example, the
11 defendants are only being held responsible for up to the
12 amounts that they agreed was reasonably foreseeable to
13 them.

14 So, for example, with Ms. Coombs, although the
15 loss to Walmart was \$165,000, Ms. Coombs agreed that she
16 was responsible for loss to Walmart of up to \$140,000 and
17 that that up to \$140,000 was reasonably foreseeable to her.
18 So the government has only asked for restitution up to that
19 amount and not above it.

20 In many instances you will see that the
21 restitution request is capped at the amount that the
22 defendants have agreed was not just reasonably foreseeable
23 to them, but is also the value of the property that was
24 taken as a result of their conduct and therefore the harm
25 that was caused to the victims.

1 That is just in a general sense how the
2 government came up with the loss amounts as to each. Each
3 defendant's objection is slightly different, and I can
4 certainly go through each defendant. I don't know if Your
5 Honor wants to hear from the defendants first, and I can
6 respond.

7 What I would say is that with respect to each of
8 these defendants, the facts upon which the government is
9 relying are unobjected to facts, both in the presentence
10 report, as well as their plea agreements, and that's not
11 just the dollar amounts.

12 It's the facts that support their convictions, as
13 well as the facts underlying their conduct. Again, if you
14 take an example for Ms. Coombs, she agreed in her
15 presentence report, both in her acceptance of
16 responsibility, as well as the facts that are outlined of
17 her conduct in the presentence report, that she stole cell
18 phones by breaking into locked cases at Walmart.

19 So that information is in the presentence report.
20 It was not objected to by Ms. Coombs. It was also in her
21 plea agreement, and then again the dollar amount stems from
22 the amount that the defendant has agreed was reasonably
23 foreseeable to her, as well as a direct result of her
24 conduct on a loss to Walmart.

25 So for each of these defendants, the government

1 is relying on those facts that were not objected to, as
2 well as the loss amounts that were agreed to.

3 THE COURT: The Mandatory Victim Restitution Act
4 allows for restitution to someone who is directly and
5 proximately harmed, correct?

6 MS. SCHOMMER: Yes, Your Honor.

7 THE COURT: Is that the same as a defendant
8 agreeing that a loss was reasonably foreseeable?

9 MS. SCHOMMER: No. I think that goes more to the
10 dollar amount than it does to the harm that was caused.
11 The proximate cause of the loss is one that is borne out by
12 their conduct. The amount that results from that that is
13 reasonably foreseeable from their conduct I think goes to
14 the dollar amount.

15 THE COURT: Okay.

16 MS. SCHOMMER: One other note that I would make
17 for Your Honor. To the extent that some of the defendants
18 have claimed that the government's motion was untimely, one
19 of the reasons that I started with the procedural history
20 of this, because it goes to the case law in this circuit as
21 well as the Supreme Court that clearly states that the
22 Court retains jurisdiction over the issue of restitution,
23 starting with the *Dolan* case.

24 That was a Supreme Court case, *Dolan versus*
25 *United States*, and then more recent cases in the Eighth

1 Circuit, *Adejumo* was another case, and there is also the
2 case of *Balentine*, all of which -- and *Thunderhawk* in
3 succession, *Thunderhawk* and then *Balentine*, which all speak
4 to timing, as well as notice to the defendants.

5 And what each of those cases say is that as long
6 as the Court makes clear at sentencing that the issue of
7 restitution is under consideration, and certainly that was
8 done in each of these cases in the J & Cs, that the issue
9 of restitution would be dealt with at a later point. So
10 certainly at the sentencing phase, the defendants were made
11 aware the restitution was still on the table.

12 Certainly backing up from that, in the
13 presentence report it was noticed, as well as letters to
14 the defendants that talked about restitution amounts.
15 Where those facts are the case, as they are here, the Court
16 has made clear that even in the *Balentine* case some two
17 years had passed between the sentencing of a defendant and
18 the ordering of restitution, the Court has said that that's
19 still a timely motion.

20 And so with that, I don't know if Your Honor
21 would like me to go through each of the defendants as I
22 have them just to recite the facts or if you would like to
23 hear from defense counsel.

24 THE COURT: Let's hear from defense counsel. Who
25 is first?

1 MS. SCHOMMER: I have them in alphabetical order,
2 but we can take them however the Court --

3 MR. SCOTT: My ego will allow me to get up there
4 first, Your Honor.

5 THE COURT: That's a sufficient reason.

6 MR. SCOTT: Also I'm the first person on her list
7 that has an objection. Your Honor, I can't disagree that
8 *Dolan* is the law, and I went back after reading *Dolan* and
9 looked at the judgment and commitment order and the plea
10 agreement.

11 The figure that they have picked for my client
12 was in the presentence investigation. We did not object.
13 The Court did specifically in the judgment and commitment
14 order reserve the issue. I think after that *Dolan*
15 controls, and I filed all of that in my papers.

16 The important thing I think to have is on page
17 five of the judgment and commitment is, you make decisions
18 on payment schedules, which are really important to avoid
19 the 50 percent penalty for not paying it immediately, and
20 whether or not interest should be awarded. I would ask the
21 Court to consider waiving interest, which is pretty common
22 in these kind of cases, and also to set a nominal payment
23 schedule for Naser Mustafa.

24 He is still serving his sentence, although he
25 will be released probably later this year.

1 THE COURT: All right.

2 MS. SCHOMMER: If we could for the record, Your
3 Honor, as each defense counsel comes up and just say who
4 they are and who they are representing so it's clear should
5 there be an appeal. I appreciate it.

6 THE COURT: All right. Mr. Ostgard?

7 MR. OSTGARD: Your Honor, good morning. James
8 Ostgard representing Mr. Chappell. I hate the MVRA. I
9 think it is, it is counter to most of what we try to
10 achieve in sentencing in terms of goals like rehabilitation
11 and that sort of thing, and my concern is with the
12 mandatory nature of the statute.

13 I represent Mr. Chappell who had, who has by the
14 government's chart one of the lowest restitution requests
15 on the part of the government. He had a very relatively
16 innocuous role in the conspiracy. He was involved in a few
17 transactions.

18 I think in talking with him, we believe that he
19 probably came away with about \$2,000 in his own pocket from
20 his involvement in this conspiracy and was responsible
21 directly for maybe just a few thousands of dollars of loss
22 to a handful of victims.

23 So my main objection is that with the mandatory
24 act, there is a requirement of a direct and proximate cause
25 of the loss by the defendant's conduct. The statute

1 doesn't talk about the conduct of the conspiracy as a
2 whole. It talks about the conduct of the individual
3 defendant, and it emphasizes that over and over again, and
4 the cases have talked about that.

5 So I would distinguish the direct and proximate
6 result of the defendant's conduct from the result or the
7 proximate cause due to the conspiracy overall, the loss due
8 to the conspiracy, and when you're going to impose
9 mandatory restitution, I think you have to look at the
10 defendant's individual conduct, what he did, what he stole,
11 and what he is responsible for directly before you impose
12 that kind of a restitution requirement that is mandatory
13 and that is going to become a judgment against him and
14 enforceable against him for up to 20 years.

15 I distinguish foreseeable loss, which is the kind
16 of loss that is used in the guidelines, from the actual
17 loss which is suffered by the victims, and I cited the
18 Court to *United States versus Chaika* in my brief, an Eighth
19 Circuit case from 2012, which indicates that loss for
20 purposes of the guidelines is not a sufficient basis for
21 establishing actual loss to the victim.

22 So basically my argument is that the government
23 hasn't established what Mr. Chappell's direct actions,
24 direct responsibility is -- what that resulted in in terms
25 of loss. It is very difficult to do that. Because it's

1 very difficult to do that and because it would require in
2 essence a civil proceeding, subsection B, determining
3 complex issues of fact relating to the cause or amount,
4 takes this case outside of the Mandatory Victims
5 Restitution Act, and it should not apply.

6 If the Mandatory Victims Restitution Act does not
7 apply, then there is some question about whether the Court
8 has authority to actually impose any kind of restitution.
9 If it does, I would ask that the Court consider restitution
10 in terms of reasonable monthly payments being made by the
11 defendant without setting a particular total restitution
12 amount which would result in a judgment against
13 Mr. Chappell at the conclusion of his period of supervised
14 release.

15 That summarizes the argument I made in my brief,
16 Your Honor.

17 THE COURT: All right. Thank you, Mr. Ostgard.
18 Mr. Gerdts?

19 MR. GERDTS: Thank you, Your Honor. Daniel
20 Gerdts representing Mr. Al Hussainawee. As to timeliness,
21 I agree that the case law provides the Court with
22 jurisdiction to consider the matter, but certainly the due
23 process clause at some point puts a limit on when the
24 government may make such request.

25 I haven't found any authority to tell me when

1 that limit is. I suspect it's on a case-by-case basis, but
2 it's quite late in this case. My primary objection in my
3 written papers has to do with the government's failure to
4 prove this loss here.

5 The government has said that the defendants have
6 stipulated to this. It says that stipulated to the
7 reasonably foreseeable losses, but as the *Alexander* case
8 and the *Chaika* case point out, the reasonably foreseeable
9 losses for determining sentencing guidelines issues is
10 distinct from the provable loss sustained by an
11 identifiable victim for restitution purposes.

12 It's, it's not the same thing. There was no
13 stipulation by Mr. Hussainawee as to restitution amounts.
14 There were, the presentence report listed requests that had
15 been made by various corporations, but as the *Chaika* case
16 points out, those are merely requests. There was no
17 recommendation as to restitution in the presentence report,
18 and therefore, he doesn't even have to object to that. He
19 is entitled to a hearing.

20 The government said, well, counsel said that she
21 is relying on the restitution chart and that we have been
22 given the restitution chart, and I have the restitution
23 chart, and what the restitution chart is, it's like a
24 Rule 1006 chart without the underlying documents.

25 It's not proof of anything. It's simply their

1 summary of what they think the numbers ought to be, but
2 there is no proof. There is no proof that this particular
3 person is a victim or this, we'll call it -- I don't know
4 which one pertains to Mr. Hussainawee, but let's just take
5 US Bank.

6 US Bank has apparently submitted a request for a
7 certain amount of money. There is no evidence presented so
8 far that Mr. Hussainawee -- that that is an identifiable
9 victim directly and proximately caused by my client's
10 conduct or that the amounts that they request are
11 compensable losses directly and proximately caused by my
12 client, and until they prove it up, the Court can't order
13 it.

14 I would agree with counsel's remarks that the,
15 this might be, this almost certainly is one of those cases
16 where the complexity of proving this and the amount of time
17 it would take for the Court and counsel to get through
18 actual proof of these numbers takes it out of the Mandatory
19 Restitution Act, and I think that's all I really wanted to
20 say on it.

21 My primary objection, Your Honor, is that there
22 is no proof in this case, and without that proof by a
23 preponderance, the Court can't order the restitution.

24 THE COURT: Okay.

25 MS. BRANDL: Good morning, Your Honor. Jean

1 Brandl representing Yolanda Coombs. Your Honor, I would
2 adopt the arguments of the other counsel who have already
3 argued because they made excellent points, and I would
4 piggyback on that.

5 I join also Mr. Gerdt's that my number one
6 argument is, there has been no proof. Yes, my client
7 agreed that \$140,000 was the potential loss. You know, she
8 stole about 140 phones. They're worth about a thousand
9 dollars each, so \$140,000 at the time of plea and at the
10 time of sentencing certainly seemed reasonable as a loss if
11 those phones were truly stolen from Walmart and they didn't
12 receive them back.

13 At the time, we didn't know whether any of them
14 were damaged, whether any of them didn't get returned to
15 Walmart, et cetera. All we knew from the police report is
16 that they were seized by police at the time because she
17 made it about 100 feet from the store or something like
18 that before the van was stopped.

19 So in our case, my client reasonably said, all
20 right, I'll allow up to \$140,000 of loss. I'll agree that
21 that's a potential loss. She didn't agree that that was
22 the loss. In this case, I feel like the government is
23 working backwards instead of forwards.

24 Instead of saying, where does the loss start and
25 how do we add it up? They say, where is the upper reaches

1 of what the clients agreed to and we will kind of just stop
2 there and somehow justify it. But I think the problem here
3 is the burden of proof is on the government to prove the
4 specificity of each loss.

5 They come back with numbers that match the
6 numbers that we thought we agreed to at the beginning, but
7 the problem is, they have a burden they have not met, and
8 as far as the \$140,000, my understanding is that every
9 single phone was returned to Walmart. We were just waiting
10 to see which were returned, which were damaged, which
11 weren't returned.

12 So I don't have any documentation to show that
13 those phones were or were not returned, et cetera. I do
14 not think that proving this restitution is too burdensome.
15 Our clients are all being asked to pay in the millions of
16 dollars in the grand total. It should not be too difficult
17 for the government.

18 The government shouldn't be allowed to say, well,
19 it's too hard to get these numbers so we're just going to
20 grab a number out of the sky. Maybe Walmart sent us the
21 number 140. I don't know. In these documents it shows
22 140, 165. There is no consistency.

23 So, you know, we were waiting for proof. We
24 never got it except for the number. Again, I don't think
25 it's difficult to prove. Let's just take my client in

1 particular. Let's say 140 phones were taken on the day in
2 question. Were they returned or weren't they?

3 Simply all the government had to do was go to the
4 store in Wisconsin, ask them how many of those phones were
5 stolen and how many returned, subtract out the numbers, and
6 then they would have a number. Again, there is literally
7 no evidence that Walmart had actually any loss on that day.

8 I feel like the government is just seeing this as
9 a blank check that, you know, and again, like, for example,
10 if someone was injured in a crime and there was a
11 possibility of \$100,000 of damage or injury, medical bills,
12 but there was only \$1,000 maybe of actual damage, I don't
13 believe that the Court would order \$100,000. It would
14 order \$1,000 because that's the actual damage to the
15 victim.

16 I would just like to cite the government motion
17 that they say that the different roles in the conspiracy
18 are responsible for an amount based on their conduct. So
19 that wasn't an exact quote, but basically what they're even
20 saying in their own motion is that everybody is being
21 assigned a different amount based on their role in the
22 conspiracy.

23 I want to remind the Court. My client was
24 involved in one act ever through the entire conspiracy.
25 She was involved in a very unsuccessful theft from Walmart,

1 and that was it. For her to have to owe \$140,000 is not
2 reasonably foreseeable -- it was reasonably foreseeable if
3 the phones weren't retrieved, but that's not the truth.

4 That's the part I'm having the hardest time with.
5 Those phones were not stolen -- I mean, they were not kept
6 away from Walmart. They were returned in their packages.
7 It wasn't like they were taken out of their packages and
8 lost their value. They were returned basically the same
9 way they left the store.

10 I'm going to strongly urge this Court to rule
11 that Ms. Coombs does not owe any restitution in this case,
12 but in the event that this Court does make a finding that
13 the burden has been met by the government, I would ask for
14 a \$25 a month payment.

15 My client earns \$2200 a month. With expenses for
16 rent, food, gas, electricity, garbage, et cetera, she is
17 left with I think \$150 at the end of the month. So it
18 would be extremely burdensome for her to even pay \$25 a
19 month. She is supporting herself and two children on her
20 own, but in any case, I am asking the Court not to order
21 restitution for Ms. Coombs.

22 THE COURT: Mr. Glaser?

23 MR. GLASER: Thank you, Your Honor. Kurt Glaser
24 for Marquis Maggiesfield. I will just join in the
25 arguments of my colleagues here and make comments specific

1 to Mr. Maggiesfield, and those are two. First off, the
2 government has not met the showing of the direct and
3 proximate cause by the evidence they have already cited to
4 the Court.

5 If they are trying to rely on this letter dated
6 July 16th, 2015, from Ms. Heino which she contained a table
7 of what she felt was the loss that was direct and proximate
8 to my client, then the government is now asking that he pay
9 \$119,401.33 for Verizon Wireless. Ms. Heino's letter came
10 to a different calculation, and that was \$41,136.34 which
11 was direct and proximate.

12 And so even at that time, it was Ms. Heino's
13 letter that put us on alert that there would be more
14 information supplied to us about how those calculations
15 were reached, and so I think that has been well covered
16 here is that we don't have the breakdown of how even those
17 numbers were reached, and without that, the government has
18 not made their showing.

19 The second point I have is that this Court did
20 already order a payment schedule for my client, \$25 a month
21 for 30 months afterwards. To remind the Court, he has been
22 diagnosed with MRSA. It's a disease where he more or less
23 cannot work with other human beings except under very
24 unique conditions because he can transmit that disease to
25 other people. It's a skin contagious disease that is not

1 treatable with modern bacteria or antibiotics.

2 So his ability to pay in the future is predicated
3 on his ability to work, which once he leaves the prison
4 system is probably close to zero. So I would ask the Court
5 to maintain the payment schedule that you have already put
6 together for him in your judgment.

7 THE COURT: Thank you.

8 MR. GLASER: Thank you.

9 MS. MacGILLIS: Good morning, Your Honor. Sarah
10 MacGillis on behalf of Edwan Mustafa. I also join some of
11 the arguments that have been advanced by my colleagues,
12 specifically that one that relates to the government's
13 failure to provide a direct causal link between the
14 \$1,015,901 it would attribute to Edwan Mustafa as part of
15 the loss amount in this case.

16 We agree that we were in receipt of the
17 government's table in 2015. We agree that there is no
18 material change as it relates to Mr. Mustafa, but we do not
19 agree that the government has at any point in time shown us
20 loss that was directly related to Edwan Mustafa's conduct,
21 and this is directly related to the second part of my
22 argument, which addresses this Court's discretion in
23 ordering restitution, either individually as to a defendant
24 or jointly and severally as to several codefendants who are
25 all responsible for the same loss.

1 18 U.S.C. 3664(h) allows this Court to consider
2 the level of culpability and the economic circumstances of
3 an individual defendant when they could potentially be
4 jointly and severally or singly responsible for
5 restitution.

6 First, as set forth in the government's own
7 sentencing pleadings in this matter, Edwan Mustafa
8 exercised little to no autonomy in this scheme. He derived
9 little personal benefit, received irregular cash payments
10 from his brothers and lived a humble life-style.

11 That's a direct quote out of the government's
12 position pleadings. The government also acknowledges the
13 complete and utter disconnect between loss and
14 Mr. Mustafa's gain, and that directly relates to this
15 Court's discretion to consider relative levels of
16 culpability in apportioning restitution.

17 Second, and again as set forth in greater detail
18 in our pleadings and specifically in our sentencing
19 pleadings, this was a long time ago, so I don't expect that
20 the Court might remember this. But Mr. Edwan Mustafa is
21 possessive of an extraordinary low intellectual ability, so
22 much so that within a few weeks of me representing him, I
23 asked the Court for funds to have him evaluated because it
24 was so clear to me that he could not understand me well and
25 that we were having some serious communication problems.

1 The Court allowed that examination to take place,
2 and the information that we got was that Edwan Mustafa
3 possesses an intellect in the bottom 3 percent of the
4 population. He possesses an intellect of a third grader.
5 That relates not only to his participation in this
6 conspiracy, but also as it relates to his ability to have
7 any kind of economic wherewithal to pay any amount of
8 restitution.

9 If this Court does order restitution, we have
10 asked that it only be ordered, that Edwan only be ordered
11 to make a nominal payment. I would suggest in this case
12 given his economic history, a payment of no more than \$20 a
13 month would be reasonable. We would also ask, as Mr. Scott
14 noted, that you waive any interest on any restitution
15 order.

16 Thank you.

17 THE COURT: Thank you, Ms. MacGillis.

18 Mr. Dunn.

19 MR. DUNN: George Dunn appearing on behalf of
20 Victor Doe. Judge, I'm going to adopt the arguments of my
21 counsel. I will try to just mention a few other things
22 that I think are applicable here.

23 Regarding the failure of the government to prove
24 the damages, there is nothing before the Court now to
25 determine whether or not these numbers they are coming up

1 with was the retail price, the price that they were hoping
2 to get if they were able to successfully sell them to
3 customers over the counter at the retail price, or whether
4 this was actually their cost, which I think for restitution
5 the costs should be figured into it as the number, rather
6 than the retail price, which when you come to the
7 sentencing, the retail price is what controls.

8 The next thing is, we don't know anything about
9 insurance, whether any insurance were made claims on this,
10 whether that would have offset their actual losses and
11 therefore who is the actual entity that lost money on this.
12 So I just add those two other items along the item of
13 specific -- their failure to prove specific amounts and
14 identifiable victims.

15 In regards to Mr. Doe and the waiver of interest
16 and nominal payments, Mr. Doe is currently in the custody
17 of ICE in Iowa. He is subject to deportation. He and his
18 family are originally from Liberia. They were family
19 members of Samuel Doe, who was the president of Liberia for
20 many years, deposed over the course of two very bloody
21 civil wars.

22 His family fled Liberia to the Ivory Coast for a
23 number of years, returned during a period of relative peace
24 and then fled to the United States. Persecution continues
25 with the Doe family in Liberia, but whether or not he will

1 be deported we don't know.

2 He was set up to be a U. S. citizen, but just
3 months after his family's applications were approved, he
4 had turned 18 a few months before and therefore was no
5 longer on the application. He had to start his own
6 applications. Being an 18-year-old high school student, he
7 didn't complete the paperwork, and he has a permanent
8 residency but not citizenship.

9 He has no assets. He has only liabilities. He
10 has no income. He has four children with child support
11 obligations. He has a high school degree from an
12 alternative learning situation, but no profession. He
13 really has no way to pay this restitution, and so I would
14 request a waiver of the interest and nominal payment of \$20
15 a month if you decide that this applies to Mr. Doe.

16 Thank you.

17 THE COURT: Thank you, Mr. Dunn.

18 MR. RUNDQUIST: Your Honor, Casey Rundquist on
19 behalf of Defendant Bilal Mustafa. We join in the
20 arguments previously made by co-counsel and largely rest on
21 our written submission for the question of whether or not
22 restitution should be ordered as the government requests
23 it.

24 With respect to the alternative remedy of waiving
25 interest and making a nominal payment schedule, I do note

1 that the Court's initial sentencing judgment has already
2 waived the interest requirement on a future restitution
3 judgment. We ask that that order continue.

4 With respect to payments, Mr. Mustafa is of
5 course in custody at the federal prison camp Duluth. I
6 anticipate his release date to be in April of 2020. We
7 would ask that upon that release he be ordered to make \$25
8 a month payments. He is similarly situated to the other
9 defendants in that he lacks significant professional skills
10 or a likelihood to initially be able to afford any more
11 contributions towards restitution than that.

12 Nothing further.

13 THE COURT: All right. Thank you, Mr. Rundquist.
14 Come on up, Mr. Lengeling.

15 MR. LENGELING: Good morning, Your Honor. Robert
16 Lengeling, L-e-n-g-e-l-i-n-g, appearing on behalf of
17 Ms. Miles. I would join my colleagues also. I won't have
18 to go into all of that again. The arguments were
19 excellent. What Ms. Miles has asked me to present to the
20 Court today is, Your Honor, she describes herself as
21 somewhat of a small-time thief.

22 So while she had some doubts what she claimed
23 amounts were here from Walmart, Your Honor, in the process
24 of negotiating her plea agreement, she did stipulate to
25 some information with the idea that there could some day be

1 a restitution order. I think from her perspective, the way
2 she has described it to me, when she hadn't heard about any
3 restitution for such a long time, she was hopeful that
4 restitution maybe wasn't going to happen for her.

5 Your Honor, she has a very difficult time coming
6 up with any income right now. She is facing a potential
7 prison sentence in Hennepin County. As the Court may know,
8 she has a revocation matter that is pending.

9 She is set for trial on July 22nd of this month
10 on a new case in Hennepin County, and frankly, if she loses
11 that, that is a 24-month commitment. That case is based on
12 the fact that she has had a very difficult time finding
13 housing, maintaining employment and income.

14 So now she is charged with falsifying an
15 application for an apartment. She has had a very difficult
16 time. Her main concern here, Your Honor, if the Court is
17 to order restitution that she, obviously, she would have to
18 have minimal payments on a monthly basis, but also waiving
19 interest and penalties as well.

20 It is her position that she doesn't believe she
21 will ever be able to ever have this paid off. She does
22 have doubts about the \$140,000 number, but certainly if the
23 Court is going to order it, she is going to need some
24 assistance in being able to come up with this kind of
25 money.

1 That is really what she is mostly concerned about
2 me presenting to the Court today. She is asking the Court
3 to not order her to pay any restitution, obviously, but
4 short of that happening, she is definitely someone that
5 would have to have the minimal payments, Your Honor.

6 Thank you.

7 THE COURT: Thank you, Mr. Lengeling.

8 Mr. Starr?

9 MR. STARR: Good morning, Your Honor. William
10 Starr representing James Mrsich. Your Honor, we did not
11 file an objection simply because we were the smallest
12 amount on the calendar, on the chart, so I didn't want to
13 rock the boat.

14 I've got my own number, Your Honor, 15CR32 JRT,
15 but I did want to just point out to the Court that the cue
16 pay, which was the liability of my client in the amount of
17 \$40,824.96, apparently there were nine other defendants
18 that were far more culpable than my client was who were
19 jointly and severally liable I assume on that 40,000.

20 Your Honor, my client filed bankruptcy on April
21 22nd, 2014. He has a gambling license, and he was a dealer
22 in the poker rooms in Canterbury and Running Aces, and he
23 lost that license. He did ten months at the camp. He
24 presently is an apprentice in barber school. He has two
25 children at home.

1 He has a \$15,000 obligation on his child support,
2 and he has no funds. So I would urge the Court to waive
3 the penalty and the interest and adjudicate the minimum
4 payments.

5 Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Starr. We got
7 everybody.

8 Ms. Schommer, anything else?

9 MS. SCHOMMER: Your Honor, I just want to make
10 clear from some of the statements that defense counsel have
11 made is that the government is only asking for actual
12 losses that have been submitted by each of these victims,
13 and those losses were submitted and set forth in the
14 presentence report.

15 Those are not estimated losses. They are not
16 just losses that happen to amount to a number that the
17 defendants have agreed to. As, for example, Mr. Starr just
18 mentioned, while his client alone had agreed to up to a
19 million dollars, the United States is only asking for him
20 to be responsible for \$40,824.96 because that's the actual
21 loss borne by the victim that was directly harmed by
22 Mr. Mrsich.

23 The losses that are submitted are actual losses,
24 and I would suggest to the Court that they are conservative
25 as well. The victims, for example, the Walmarts, the AT&T,

1 Sprint, those companies did not use retail value, as many
2 have suggested. These phones could retail for well in
3 excess of a thousand dollars, but the companies were using
4 their losses, the cost to them for these phones.

5 THE COURT: Did each of them use that cost
6 number?

7 MS. SCHOMMER: Yes. That's my understanding,
8 Your Honor. With respect to Mr. Maggiesfield, Mr. Glaser
9 made a suggestion that there had been a lower amount
10 previously mentioned in Ms. Heino's letter and attachment,
11 and I have that here and would just point out to the Court
12 that the supplement that was attached to Ms. Heino's letter
13 of July 16th, 2015, actually had a much greater amount for
14 Mr. Maggiesfield.

15 Mr. Maggiesfield, just to remind the Court, had
16 agreed to a loss foreseeable to him of up to \$350,000, and
17 in fact Ms. Heino had assessed an amount of \$350,000 to
18 Mr. Maggiesfield. Whereas, the government here today is
19 only asking for restitution to Verizon, and that amount is
20 \$119,000, so far less than what was actually originally
21 estimated to be a loss caused by Mr. Maggiesfield.

22 The United States has no further argument on the
23 point and would rest on its previous argument.

24 THE COURT: All right. Anything else from
25 anybody?

1 All right. The Court will take the motion and
2 the objections here made under advisement and will issue a
3 written order as quickly as possible.

4 Thank you for coming in morning. The Court is in
5 recess.

6 THE CLERK: All rise.

7 **(Court was adjourned.)**

8 * * *

9 I, Kristine Mousseau, certify that the foregoing
10 is a correct transcript from the record of proceedings in
11 the above-entitled matter.

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15 Certified by: s/ Kristine Mousseau, CRR-RPR
16 Kristine Mousseau, CRR-RPR
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